DOCKET NO.: X04 HHD-CV16-6069748-S : SUPERIOR COURT

CENTERPLAN CONSTRUCTION COMPANY LLC,

DONO HARTFORD LLC COMPLEX LITIGATION

V. : AT HARTFORD

CITY OF HARTFORD : MARCH 1, 2017

## **AMENDED COMPLAINT**

Pursuant to the Plaintiffs' Unopposed Motion to Grant Stipulation and Proposed Order [Doc. 115], and this Court's Order approving same [Doc. 115.86], Plaintiffs', Centerplan Construction Company LLC (herein also "Centerplan") and DoNo Hartford LLC (herein also "DoNo"), hereby file their Amended Complaint.

- 1. Centerplan Construction Company LLC is a domestic limited liability company incorporated in the State of Connecticut with a business address of 250 Sackett Point Road, North Haven, CT 06473. Mr. Robert A. Landino is the owner of Centerplan and related businesses.
- 2. The City of Hartford (herein also the "City") is a municipal corporation organized and operating under the laws of the State of Connecticut.
- DoNo Hartford LLC is a domestic limited liability company incorporated in the State of Connecticut with a business address of 250 Sackett Point Road, North Haven, CT 06473.
- 4. Connecticut Double Play, LLC d/b/a Hartford Yard Goats (herein also the "Ball Club") is a limited liability company incorporated in the State of Delaware that

conducts business in the State of Connecticut, with a Connecticut business address of 99 Pratt Street, Hartford, 06103.

- 5. As part of a plan to revitalize the north end of Hartford, Former Mayor Segarra formulated a plan to lure a minor league baseball team to Hartford as the anchor of a huge downtown real estate project which would lead to the construction of more than \$350,000,000 of housing, retail and commercial space in formerly vacant land operated as parking lots in the North End of Hartford.
- 6. The lynch pin of the former Mayor's plan was the minor league baseball team formerly located in New Britain Connecticut. Mayor Segarra lured the then called New Britain Rock Cats away from New Britain, Connecticut, another depressed community with limited resources, with the enticement of the promise to build a state of the art AA baseball stadium. <a href="http://www.courant.com/news/connecticut/hc-hartford-rockcats-0605-20140604-story.html">http://www.courant.com/news/connecticut/hc-hartford-rockcats-0605-20140604-story.html</a>.
- 7. Hartford's effort to lure the Rock Cats away from New Britain was criticized on several levels. First it took away a significant resource from a depressed Connecticut City under a cloud of claims of fraud, broken promises and deceit. <a href="http://www.nhregister.com/sports/20140604/malafronte-rock-cats-owner-breaks-promise-made-when-team-was-bought">http://www.nhregister.com/sports/20140604/malafronte-rock-cats-owner-breaks-promise-made-when-team-was-bought</a>. Second, it committed millions of dollars of public money to a financially risky project. Finally, it would increase the financial pressure on the City of Hartford that was already experiencing bankruptcy like symptoms arising from the demands of pensions for the firemen and police.

- 8. The former Mayor's plan was a political maneuver to build support for the 2015 election during which the current Mayor Luke Bronin challenged former Mayor Segarra in a primary.
- 9. In July of 2014, the City of Hartford issued a Request for Proposals ("RFP") to develop the Baseball Park and surrounding real estate. There were several submissions. After detailed analysis and interviews, the City selected a team of Centerplan and others who were developing a project in Mansfield, Connecticut near UConn. <a href="http://articles.courant.com/2014-08-05/news/hc-hartford-stadium-bids-0806-20140805">http://articles.courant.com/2014-08-05/news/hc-hartford-stadium-bids-0806-20140805</a> 1 metro-square-downtown-north-commercial-space.
- 20. The process of developing the Project was never smooth. It took an extended period of time to obtain various approvals necessary for the Project. The City Plan commission, headed by Sara Bronin, an architect as well as a land use lawyer who was also a tenured professor of law at UConn Law School was particularly problematic. <a href="http://wnpr.org/post/hartford-baseball-stadium-turns">http://wnpr.org/post/hartford-baseball-stadium-turns</a>. The debates covered issues arising from just how the City had to authorize the use of the land to how the proposed development fit into the master plan for the City which was developed under Ms. Bronin. <a href="http://wnpr.org/post/hartfords-planning-commission-votes-against-baseball-stadium">http://wnpr.org/post/hartfords-planning-commission-votes-against-baseball-stadium</a>.
- 11. During the planning process, the project was budgeted for \$60,000,000 including construction of the Ballpark. The cost ballooned well past the planned budgets before construction commenced because of commitments the City made to the

community and the Ball Club, as well as because of the way the City managed the process.

- 12. In the original response to the RFP, DoNo was to own, and lease the Ballpark to the City. The City would then lease the Ballpark to the Ball Club. The City decided to retain ownership of the land and lease the Ballpark to the Ball Club. The lease from the City to the Ball Club is for a substantially discounted, below market rent. The City created the Hartford Stadium Authority (the "HSA"), to own the Ballpark and lease it to the Ball Club. The HSA raised the money to pay DoNo to build the Ballpark through a bond issue, guaranteed by the City.
- 13. The City never acted as if it was constrained by any budget or financing concerns. For example, on the afternoon of the final City Council meeting prior to final approval of the Ballpark contract, the City Council voted to require a Project Labor Agreement ("PLA"). A PLA requires the contractors to use union labor. This requirement inherently increased the cost of this project by at least 15%. The City did not increase the budget to compensate for this requirement. The City Council also added additional community requirements which added significant cost. The additional community requirements increased costs by 5% across the board. The City refused to increase the budget to account for the additional requirements.
- 14. Centerplan advised the City that the only way that the additions to the budget could be accommodated was to change the design and thereby lower the construction cost of the Ballpark. The City, DoNo and Centerplan entered into a contract

which was intended to give Centerplan complete control over all decisions related to cost, including all aspects of design.

- 15. On or about February 4, 2015, after an extended negotiation the City, as "Owner," and DoNo, as "Developer" entered into a Development Services Agreement ("DSA") for the construction of a baseball field and parking facilities (hereinafter the "Project") as outlined in that certain "Ballpark Development Agreement" dated January 26, 2015 entered into by and among the City, the HSA and the Ball Club. The Ballpark Development Agreement was actually entered into before the HSA was created.
- 16. On or about February 6, 2015, DoNo, as "Owner," and Centerplan, as "Design Builder" entered into a Design Build Contract ("DBC") for the Project. The budget limit for the project was set at \$53,550,000 in the DBC. Centerplan sought to control the ball park design so that it could meet the budget. To that end, a set of drawings were incorporated into the DBC which not only affirmed that the design and budget was to be controlled by Centerplan, but also provided a specific roadmap to enable the City and Centerplan to achieved the budget.
- 17. Despite the fact that the City knew that the budget was limited and that Centerplan was to control the design, the City through a series of meetings made design changes required by the Ball Club and design professionals throughout the process making it impossible to construct the Project for the planned budget.
- 18. The DSA specifically stated that the City acknowledged that in order for the Developer and Design Builder to maintain budget, it was "imperative" that the

Developer and Design Builder control the design and any further changes to the Project.

The DBC required that upon execution in February, 2015, the City was to assign control of all design professionals that were previously under the direction of the City to Centerplan. This assignment never occurred.

- 19. The City, with the Ball Club, worked on design documents through the spring of 2015. The City and the Ball Club substantially changed and increased the amount of work required in virtually every area of the Project.
- 20. The drawings were completed in March of 2015, and a construction estimate was completed shortly thereafter. The projected cost of construction ballooned by approximately \$11 million dollars. The planned budget was \$53,550,000. The actual projected cost based on the design the City and Ball Club prepared was closer to \$65,000,000.
- 21. The City never relinquished control of the design. The Ball Club with the City continued to direct the design process through design professionals who were related to the owner of the Ball Club.
- 22. On June 10, 2015, five months after the execution of the DBA, the City, DoNo and Centerplan modified the DBA so that Centerplan only had responsibility for contract administration services during construction. At no time did Centerplan ever have control of the design in this process, making it impossible for Centerplan to control the budget.

- 23. The City never relinquished control of the design of the Project to Centerplan and never finished the design.
- 24. Centerplan entered into numerous contracts with subcontractors and suppliers who would actually construct the Project based on plans and specifications furnished by the City. The City represented the plans and specifications were complete. The City also asked Centerplan to offer value engineering suggestions with an eye toward lowering the projected cost of the construction.
- 25. Centerplan worked diligently to reduce costs and it offered suggestions to change the design and otherwise alter the work to lower the cost of construction to the budget mandated by the City in accordance with its rights under the various agreements. Throughout the summer of 2015, Centerplan proposed over 180 design and value engineering changes to reduce cost, the total of which lower the cost to or near the original budget. Only about 20 percent of these recommendations were accepted, and the Project remained substantially over budget by approximately \$11 million dollars.
- 26. The process the City imposed under which it controlled the design of the Project breached the DSA and other related agreements. The City prevented Centerplan from controlling the design and therefore from reaching the proposed construction budget. The City provided express direction to Centerplan to modify the Furniture, Fixture and Equipment ("FF&E"), budget set at \$6,500,000, to provide additional subsidies to the Ball Club. The City and the Ball Club rejected proposed

Value Engineering suggestions made by Centerplan that would have saved money and lowered construction cost, which suggestions would not have adversely affected the fan experience of watching a minor league baseball game in downtown Hartford.

- 27. As a result of the actions of the City outlined above, the cost of the work exceeded the budget.
- 28. In late 2015, Centerplan advised the City that it could not complete the work for the amount of money the City had left in the various accounts set aside to pay for the work, that adjustments had to be made and that completion for the beginning of the baseball season in April was in question.
- 29. A dispute then arose between the City, The Baseball Team Owner, Josh Solomon, Centerplan and DoNo about the amount of time and money that was then necessary to complete the Project. The various contracts between the parties require that all disputes be mediated and designated two potential mediators, both selected by the City, as a first step in the dispute resolution process.
- 30. In December of 2015, DoNo and Centerplan requested mediation, as per the agreements, to resolve the matters in dispute, while it continued work on the Project. The City refused to mediate. Corporation Counsel for the City stated that there were no decision makers available until the new administration under current mayor Luke Bronin took office. This delayed the resolution of the dispute for two months.
- 31. During the extended negotiation of the dispute each side was represented by counsel. On January 19, 2016, the City, Josh Solomon, DoNo, and Centerplan

reached an agreement. Despite the presence of the lawyers, the agreement was never reduced to one single document. The City insisted on a term sheet. The City and DoNo set out the terms of the resolution of the dispute in a document described as a "Term Sheet" in which the City and DoNo and Centerplan agreed to extend the date for Substantial Completion of the Project from March 11, 2016 to May 17, 2016 (herein the "Term Sheet" or "January Agreement") and increase the Guaranteed Maximum Price ("GMP") by over \$10,300,000 to accommodate the changes mandated by the City and the Ball Club.

- 32. In the January Agreement, Centerplan and DoNo agreed to contribute approximately \$2.8 million to the settlement. The City agreed to provide the remaining \$7,500,000. However, the City did not raise the full \$7,500,000 in the ensuing bond issue; it only raised \$5,500,000. The City relied on the Ball Club's agreement to pay up to \$2,000,000. The January Agreement was not conditioned on or in any way tied to the agreement between the City and the Ball Club. As such, it now is evident that the City never appropriated enough money to meet its obligations.
- 33. Centerplan continued to construct the Project despite the fact that the City did not produce a comprehensive agreement until late February. Centerplan requested the comprehensive agreement daily beginning January 19, 2016. Once provided, the City refused to execute the complete agreement. The City attempted to renegotiate settled terms of the January Agreement. The City attempted to have DoNo absorb more of the additional cost arising from construction of the Ballpark by adjusting the PILOT

("Payment in Lieu of Taxes") payments due from the developer for the property surrounding the Ball Park.

- 34. During the renegotiation, Centerplan continued construction in good faith in reliance on the representation that a definitive agreement was forthcoming, that appropriate funds would be made available and that no further changes in the design would occur. After all, this was mid-January, and a delivery of the completed Ballpark was projected by mid-May.
  - 35. Ultimately the City refused to execute a final complete agreement.
- 36. A critical element of the January Agreement was that that there would be no further changes to the Project without the "express written consent of the City".
- 37. The Ball Club takes the position that the City made representations to it and allowed it to have discretion to require changes to enhance the "fan experience" at the Ballpark. The Ballpark is now widely considered and described as the finest minor league baseball stadium in all of baseball.
- 38. Following the execution of the January Agreement, the City, the Ball Club and the design professionals engaged in numerous meetings during which the design of the Project was reviewed and altered. Following the execution of the January Agreement, the City almost immediately issued a new set of drawings which set forth dozens of changes to the Project named SI 15. Prior to the January Agreement, the City had issued SI 14. The City then renamed the proposed changes SI 14R. This was an attempt to mask the purpose of the changes. The City also described the proposed

changes as code compliance issues. In fact, they were enhancements to the design required by the Ball Club. The City tried to create a smoke screen.

- 39. At no time did Centerplan have the ability to reject these changes, or quantify their impact on cost and schedule until the City issued Construction Change Directives ("CCDs") in April and May of 2016. The City issued the CCDs with full knowledge that the CCDs would make it impossible for Centerplan to meet the May 17<sup>th</sup> 2016 completion date.
- 40. The City issued directions to perform additional work through change orders and Construction Change Directives ("CCDs"). In addition to SI 15, which became SI 14R, which became CCD 1, the City issued 4 more CCDs to Centerplan and DoNo in April and May of 2016. A sixth CCD was circulated in draft form on or about June 6, 2016 (it was not yet completed by the design professionals).
- 41. The CCDs and Change Orders added substantial work to the Project which would take time to construct. The additional work made it impossible for the construction to be completed on time for the first home game in late May, 2016. The City knew at the time it made the changes and issued the CCDs that the work could not be completed in time for the baseball season. The City also was keenly aware that the CCDs added cost, for which it was responsible.
- 42. In addition, the City issued 4 Change Orders signed by the HSA.

  Ultimately, the City did not fund the Change Orders and did not follow the terms of the DSA. Failure to fund is a breach of the DSA.

- 43. The City asked DoNo and Centerplan to withhold information about the actual completion date from the general public. It is now evident that the City's problem was that it did not have the money appropriated to cover the increased cost of the construction.
- 44. Centerplan got to within 5% of completion of the Project. The City knew that Centerplan would have a claim for more than \$14,000,000 for the additional work set out in the CCDs and the balance due under the construction contract. In late May, 2016, Centerplan had been working double shifts with very large crews (in some cases as many as 600 people) to complete the work.
- 45. As of June 5, 2016, Centerplan was owed over \$6,000,000 just based on the approved requisition, but had claims for even more money to cover the Change Order work and CCD work which for the most part was underway or committed.
- 46. Centerplan was whipsawed. On the one hand it had posted a bond to assure the City that Centerplan could pay subcontractors and perform the work on the Project. On the other hand, the City specifically refused to pay for the work it ordered performed by the various subcontractors and suppliers it knew had to perform the work.
- 47. With full knowledge of the problems on the Project and the time sensitivities of the construction, the City took the position that Centerplan should finish the construction and seek payment through the dispute resolution process for the additional work after it had first covered the City's costs. The city also said that the

additional money should be derived from the real estate deal covering the land surrounding the Ballpark which the City had leased to DoNo.

- 48. When Centerplan insisted the City address and resolve its payment obligations, the City attempted to "call Centerplan's Bond." The City knew that such an action would threaten Centerplan's very existence as a going concern.
- 49. The construction documents provide that Centerplan has no obligation to construct any work without written Change Orders or CCDs which provide for a means to pay for the work. The various construction documents and development agreements provide that the City shall be in default of its obligations if it contends it does not have the money to pay for changes it directs.
- 50. DoNo's ability to develop the property surrounding the Ballpark was dependent on completion of the construction of the Ballpark. It had prospects for a \$60,000,000 development on one of the parcels and was in the market trying to raise equity to commence construction. This would be the first part of a \$350,000,000 development on the land surrounding the Ball Park.
- 51. DoNo advised the City that without the assurance of the funds and clear direction about the potential additional work, the Ball Park Project could not be completed on time. The City suggested that it might have to go bankrupt and could not meet its then current obligations to Centerplan. If the City went bankrupt, then all prospects for developing the parcels around the Ball Park would end for the foreseeable future. The City's conduct has made it virtually impossible to develop the adjoined land.

- 52. The City increased the pressure on DoNo and Centerplan by further engaging in discussions with and making threats to Arch, the bonding company.
- 53. As of June 6, 2016, the City told everyone who would listen it did not have enough funds on hand to pay for the changes it ordered and specifically did not have the money to pay the May requisition which had been approved by the Architects and the City's own Owners Representatives and was in process to be approved the following day at the scheduled HSA meeting.
- 54. DoNo again advised the City that the construction could not be completed by what the City deemed "on time." The City retaliated by making demand on Arch Insurance Co., the Bonding Company that provided a financial guarantee to the City that the Contractor could complete and pay for the work under a certain performance bond issued by Arch for the Project.
- 55. At all relevant times, the City knew that as a result of the Change Orders and CCDs issued by the City in April and May of 2016, to the Project, the Substantial Completion Deadline of May 17, 2016 could not be met.
- 56. In late May, 2016 representatives of DoNo, Centerplan, and Arch Insurance Company ("Arch") met with the City regarding the Project. The City demanded that Arch take over the Project, provide funds for and complete the construction and then seek payment through the dispute resolution process mandated by the various contracts.

- 57. In early June, Arch told the City it would not even investigate the Project unless and until the City terminated Centerplan and the various contracts.
- 58. On or about June 6, 2016, despite being in material default, the City wrongfully terminated the DSA and the Design Build Contract and formally called the bond by sending Arch notice of the termination.
- 59. Centerplan and DoNo were not in material default. The City was in material default. It refused to pay for work performed and acceptably completed. It issued continuous change directives that increased the cost and prevented Centerplan from finishing on time. It refused to pay the increased costs.
- 60. Arch had no obligation to perform. Arch's only obligation arises under the Performance Bond it issued. The bond provides in relevant part:

Notwithstanding anything contained herein to the contrary, there shall be no liability on the part of the Principal [Centerplan] or Surety [Arch] under this Bond to the Obligees [City], or any of them, unless the Obligees, or any of them, shall make payments to the Principal, or to the Surety in case it arranges for completion of the Contract upon default of the Principal, strictly in accordance with the terms of said Contract as to payments, and shall perform all the other obligations required to be performed under said Contract at the time and in the manner therein set forth.

- 61. Arch owed a duty of good faith and fair dealing as well to Centerplan arising at common law and under the Performance Bond.
- 62. When it terminated Centerplan and DoNo the City materially breached the various contracts because if failed to provide appropriate notice, failed to allow a cure period, was in material breach itself, and insisted on performance in accordance with

designs it furnished which could not be built. The City also breached its obligation of good faith and fair dealing.

- 63. As the Surety on the performance bond and the payment bond, Arch was bound by the terms of the DSA and various contracts to the same extent as Centerplan was bound to the City. That means that Arch was only obligated (if it was obligated at all) to perform and pay for work covered by its bonds which was the work covered by the contracts between Centerplan and DoNo.
- 64. As a surety, Arch also had additional obligations under contract and by law to pay subcontractors and suppliers that provided work on the Project to Centerplan promptly. The effect of the payment bond would be to provide a direct subsidy to the Project because Arch may have been obligated to pay unpaid subcontractors and suppliers despite the fact that Centerplan had not been paid by the City. Centerplan's subcontracts have "paid if paid" provisions. The City has contended that despite the pay if paid provisions of the various subcontracts and the dispute between it and Centerplan about the amount of money the City owes Centerplan for work completed, Arch has to pay the subcontractors and suppliers.
- 65. Because the City ordered additional work to be performed for which it is now obvious the City did not have funds to pay and because the design for which the City was responsible was not complete, even Arch could not simply recommence construction and complete the Project.

- 66. Centerplan undertook to perform work based on the City's false representations it would pay for the work. It now appears the City has never had enough money allocated to pay Centerplan the value of the work performed.
- 67. When Arch became involved, it had to conduct a detailed investigation of the Project to determine the amounts owed various subcontractors and suppliers as well as the scope and nature of the work that had to be completed.
- 68. Now, faced with the deadline to complete the construction by the 2017 baseball seasons, Arch has been forced or elected to perform work or authorized payment for work which Arch knows was not covered by the contracts existing at the time Centerplan was wrongfully terminated as well as design defects and other work.
- 69. Arch contends it paid subcontractors and suppliers who had not yet been paid by Centerplan due to the City's breaches to mitigate damages because it needed the subcontractors and suppliers to come back and finish work.
- 70. Arch has made demand on Mr. Robert A. Landino to pay for the obligations Arch has incurred to complete the Ballpark Project.
- 71. Mr. Robert Landino, the owner of Centerplan, has offered Arch security which would cover most if not all of the potential exposure Arch has for payments Arch might have been obligated to make under the payment and performance Bonds.
- 72. It appears, Arch has demanded even more money to cover the work that neither Centerplan nor Arch was obligated to perform but that the City and/or Ball Club now claim is necessary to perform so the Project can be completed.

- 73. Arch has refused to take the security offered and commenced litigation to compel Mr. Landino and others to provide other security for the payment of the costs Arch claims it has incurred to complete construction. The City knew or should have known that Arch would demand payment from Mr. Landino and Centerplan.
- 74. As a result of the wrongful termination of the various contracts between the City, DoNo and Centerplan, the City has caused DoNo and Centerplan to suffer very significant damages.
- 75. The damages include the cost incurred by Centerplan which the City has not paid, about \$14,000,000, together with the amount Arch seeks to recover from Centerplan and Mr. Landino for completion of the Project, which amount may be as much as \$36,000,000.
- 76. The damages DoNo and Centerplan may suffer as a result of the City's actions could be in excess of \$40,000,000 and arise because of the impact the City's conduct has had on Centerplan's and DoNo's ability to construct buildings on and otherwise develop the property surrounding the Ballpark.
- 77. The total damage for which the City may be liable is in excess of \$90,000,000. The City has been aware of this claim for several months.
- 78. The contracts between the City, DoNo and Centerplan provide that Centerplan and DoNo may recover legal fees from the City if Centerplan and/or DoNo prevail. City has agreed to mediate all claims that arise from the Ball Park Project. And,

if mediation does not result in resolution of the claims then litigate in the Superior Court in Hartford, Connecticut.

WHEREFORE, Centerplan and DoNo claim money damages, legal fees, interests, costs of the action and such other legal or equitable relief as the law allows.

PLAINTIFFS, DONO HARTFORD, LLC and CENTERPLAN CONSTRUCTION

COMPANY, LLC

By:

Raymond A. Garcia

Garcia & Milas P.C.

44 Trumbull Street

New Haven, CT 06510

Telephone: (203) 773-3824 Facsimile: (203) 782-2312

Email: r\_garcia@garciamilas.com

Juris No. 105053

Their Attorney

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## STATEMENT OF AMOUNT IN DEMAND

The amount in demand, exclusive of interest and costs, is greater than Fifteen Thousand Dollars (\$15,000.00).

By:

Raymond A. Garcia Garcia & Milas, P.C. 44 Trumbull Street

New Haven, CT 06510 Telephone: (203) 773-3824 Facsimile: (203) 782-2312

Email: r\_garcia@garciamilas.com

Juris No. 105053

Their Attorney

## **CERTIFICATION**

This is to certify that a copy of the foregoing has been delivered electronically to the following counsel of record, on this 1st day of March, 2017:

Leslie P. King, Esq.
Loring A. Cook, III Esq.
Murtha Cullina, LLP
265 Church Street
New Haven, CT 06510
<a href="mailto:lking@murthalaw.com">lking@murthalaw.com</a>
lcook@murthalaw.com

Raymond A. Garcia, Esq.